IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NOS.925 OF 2004 TO 934 OF 2004

SHRI MADHUKAR NARHARI PARIKH ...PETITIONER.

VS.

REGISTRAR OF COMPANIES & ORS. ...RESPONDENTS.

MR. SHIRISH V. PITRE FOR THE PETITIONER.

MR. H.V.MEHTA FOR RESPONDENT NO.1.

MRS. U.V.KEJARIWAL PP FOR THE STATE.

Coram : S.K.Shah, J.

Date : July 18, 2006.

P.C.

1. By all these writ petitions, the Petitioner challenged the order of issuance of process against the petitioner for offence punishable under Section 162 of the Companies Act, for failure to file the returns, required to be filed under the provisions of Section 159, 160 and 161 of the Companies Act.

2. The contention of the petitioner is that he was appointed as Company secretary on 1.3.1995. Thereafter, he tendered his resignation on 25.10.1995 and the same was accepted on 1.12.1995. He further contends that the returns which were required to be filed under Section 159, 160 and 161 of the Companies

Act, were for the period from 1995-96 to 1999-2000 that is, ten six monthly periods. The requirement of the aforesaid provisions was that within 30 days of the expiry of the 6 months period, returns were required to be filed and they were not filed. Therefore, the prosecution was launched and the process was issued.

3. The period was from April, 1995 for 6 months onwards for filing the said returns. It is obvious that the responsibility of filing the returns would arise only after the expiry of the period of six months. It is undisputed that the petitioner had resigned on 25.10.1995 and the same was accepted on 1.12.1995. The acceptance of the resignation would relate back to the date of tendering of the resignation i.e. 25.10.1995. As such the responsibility to file the returns could not have been of the petitioner for period of six months after 1995-96 to 1999-2000. Resignation of the petitioner was communicated to the Registrar of the Companies while filing the returns for 1995-96. At any rate, under Section 303(2) of the Companies Act, it was the responsibility of the then existing Secretary or the other office bearers of the Company to communicate the resignation of the Petitioner. Therefore, at any rate, it could not have been said that the Petitioner was responsible for non-filing of the returns, as he had already resigned. Under the circumstances, no complaint could have been filed against the petitioner. Since the complaint is filed against the Petitioner, the same is required to be quashed.

. Consequently, the complaints filed against the Petitioner and the cognizance of the offence taken against the petitioner in all the complaints, for which the writ petitions have been filed, are hereby quashed and all the above writ petitions are made absolute accordingly.

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[S.K.Shah, J.]